

Amendment and Response

Applicant: Jack D. Lemmon

Serial No.: 10/688,718

Filed: October 17, 2003

Docket No.: M190.143.101

Title: PROSTHETIC HEART VALVE SIZER ASSEMBLY WITH FLEXIBLE SIZER BODY

REMARKS

This is responsive to the Non-Final Office Action mailed October 12, 2006. In that Office Action, the Examiner rejected claims 11 and 14 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards s the invention. Claims 20-22, 25-28, and 30 were rejected under 35 U.S.C. §103(a) as being unpatentable over Love et al., U.S. Patent No. 6,678,962 ("Love") in view of Schoon et al., U.S. Patent No. 6,719,785 ("Schoon"). The Examiner's indication that claims 1-8, 12, 13, 15-19, 38, and 40-42 have been allowed, and that claim 24 (although objected to) would be deemed allowable if rewritten in independent form, is noted with appreciation.

With this Response, claim 11 has been cancelled, and claim 43 has been added. Claims 1-8, 12-31, 38 and 40-43 remain pending in the application and are presented for reconsideration and allowance.

35 U.S.C. §112, Second Paragraph, Rejections

With this Response, claim 11 has been cancelled, thus obviating the rejection under §112, second paragraph. As a point of reference, the previously-filed Amendment and Response dated September 5, 2006 inadvertently cancelled claims 9 and 10, instead of claims 10 and 11 as intended. With this Response, then, newly presented claim 43 has been added, and represents a re-presentation of originally-submitted claim 9.

With respect to claim 14, the Examiner's indication that the claim has been added back into prosecution is noted with appreciation. In response to the Examiner's request for direction to the specification and drawings for support, it is initially noted that claim 14 was presented with the initial filing of the application. Further, support for the language is found, for example, in FIG. 7 and at page 19, line 15 – page 20, line 7. In light of this explanation, it is respectfully requested that the rejection of claim 14 be withdrawn.

35 U.S.C. §103 Rejections

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Regarding the rejection of independent claim 20 based on Love in view of Schoon, it is respectfully submitted that a requisite suggestion to combine does not exist. Love relates to a measuring instrument used to measure the size and dimensions of heart valves as part of a heart valve reconstruction. *Love* at col. 1, ll. 29-37. The Love measuring instrument of FIGS. 1 and 2 includes a circular sizing portion 1 and three curved legs 2. The sizing portion 1 is used to measure the diameter of the valve orifice. *Love* at col. 2, ll. 32-34. The legs 2 are used to measure individual leaflet height (*Love* at col. 3, ll. 7-9), and collectively define a diameter substantially equivalent to the diameter of the circular sizing portion 1. *Love* at col. 2, ll. 36-39. Thus, the Love measuring instrument is specifically configured for use in evaluating a heart valve anatomy in which the leaflets have not been surgically removed; the circular sizing portion 1 used to measuring annulus diameter and the legs 2 used to measure leaflet height. Conversely, the device of Schoon is configured for insertion into the aorta following removal of the mitral valve leaflets. *Schoon* at col. 13, ll. 46-67.

In light of the above, Love and Schoon are configured for distinct applications, such that a requisite suggestion to modify Love in view of Schoon does not exist. In particular, the Love measuring device measures a valve anatomy that specifically includes the leaflets, whereas the Schoon device sizes a valve anatomy after removal of the leaflets. In light of these distinct applications, it is respectfully submitted that one of skill would not consider modifying the Love device to incorporate features of the Schoon device, for example handle location. In the absence of a viable suggestion to combine, it is respectfully submitted that claim 20, as well as claims 21-31 depending therefrom, are allowable over the cited art.

CONCLUSION

In view of the above, Applicant respectfully submits that pending claims 1-8, 12-31, 38 and 40-43 are in form for allowance and are not taught or suggested by the cited references. Therefore, reconsideration and withdrawal of the rejections and allowance of claims 1-8, 12-31, 38 and 40-43 are respectfully requested.

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No fees are required under 37 C.F.R. 1.16(b)(c). However, if such fees are required, the Patent Office is hereby authorized to charge Deposit Account No. 50-0471.

The Examiner is invited to contact the Applicant's representative at the below-listed telephone numbers to facilitate prosecution of this application.

Any inquiry regarding this Amendment and Response should be directed to Timothy A. Czaja at Telephone No. (612) 573-2004, Facsimile No. (612) 573-2005. In addition, all correspondence should continue to be directed to the following address:

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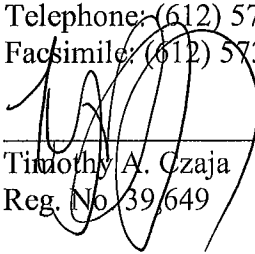
Respectfully submitted,

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